IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.23248 of 2004

Between:

Gandhi Institute of Technology and Management (GITAM), Gandhinagar Campus, Yendada, Visakhapatnam,
being rep. by its Secretary C.Venkataramaiah, S/o. Chinnayya, aged 68, Male, Hindu,
R/o. Visakhapatnam.

..... PETITIONER

AND

The Mandal Revenue Officer, Visakhpatnam Rural Mandal, Visakhapatnam District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to Issue any writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondent in issuing notice under Sec. 7 of the Madras Act 3 of 1905 without specific allegation that any occupation is made after disposal of the writ petition by the division bench of this Hon'ble Court in W.P. No. 183 of 2002 and also attempt to demolish the compound wall and the road situated within the own premises of the petitioner without weighting for passing orders on Sec. 7 notice after conducting enquiry and issuing Sec. 6 notice under the said Act on 13.12.2004 by the respondent as illegal, arbitrary capricious unjust and violative of principles of natural justice and fair play and consequently set-aside the notice in R.c.No.311/.2001/A dt. 06.12.2004 and direct the respondent not to demolish the compound wall and road in dispute pending disposal of the W.P.

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondent : GP FOR REVENUE

The Court made the following :

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 23248 of 2004

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O r d e r:

The petitioner, which is an educational institution, states that the Government of Andhra Pradesh allotted an extent of
Ac. 71-15 cents of land in Sy. Nos. 17/1 to 17/28 of Yendada village, Visakhapatnam District. The petitioner having developed the said land, also constructed compound wall around the campus. While so, some private individuals filed writ petition in W.P. No. 183 of 2002 complaining that the petitioner is in occupation and encroachment of land in Sy. Nos. 19 (part), 29 (part), 37 and 38/1 to 38/8 of the said village. The District Collector, it is stated, in the said writ petition, filed counter that the land to the extent, which is in occupation and encroachment of the petitioner, was resumed by the Government. Recording this statement of the District Collector, the writ petition, by order dated 27-11-2002, was closed. While the matters stood thus, the respondent issued notice dated 6-12-2004 under Section 7 of Act 3 of 1905, alleging that it has encroached an extent of Ac.6.09 cents of land in Sy. Nos. 19(part) and 20 (part), which is enclosed by a compound wall. To the said notice, the petitioner claims to have submitted his explanation on 11-12-2004 stating that after demarcation of the land in 2002, it had not encroached any land, much less the land in Sy. Nos. 19 (part) and 20 (part). While so, it is the case of the petitioner that without conducting any enquiry and without considering his explanation, the respondent is seeking to demolish the compound wall, which is illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue for the respondent.

Disputing the averments made in the affidavit, filed in support of the writ petition, the respondent filed counter. However, reiterating the counter averments, it is submitted by the learned Government Pleader for Revenue that as requested by the petitioner in the explanation submitted by him to the notice issued under Section

7 of Act 3 of 1905, which was received by respondent on 13-12-2004, the respondent after due notice to the petitioner, in the presence of the Revenue Divisional Officers and a team of Surveyors and the Executive Engineer of the petitioner, conducted survey on 14-2-2004, and even before passing final orders, the petitioner filed the present writ petition. In reply to the counter averments, the petitioner filed reply-affidavit stating that a detailed survey cannot be conducted in an hour or so and it requires some time, and in fact, no survey, as alleged by the respondent was conducted on 14-12-2004. The petitioner states to resolve the dispute involved, a detailed survey in the presence of the management of the petitioner with reference to its title deeds assisted by their qualified Surveyors, would be justified.

Though the petitioner *inter alia* assailed the notice dated
6-12-2004 issued by the respondent under Section 7 of Act 3 of 1905, and though the respondent contended that, he in fact, had already conducted the survey of the land on 14-12-2004, at the time of hearing the matter, the learned Government Pleader for Revenue in view of the averments made by the petitioner in the reply-affidavit that survey be conducted with reference to the title deeds of the petitioner, agreed for conducting survey of the land afresh with reference to the title deeds of the petitioner. In view of the agreed stand taken by the parties, I deem it appropriate to dispose of the writ petition with the following directions:

The respondent shall conduct survey of the land in question afresh with reference to the title deeds of the petitioner, with the assistance of the Surveyors, in the presence of the petitioner or its nominee, duly intimating the petitioner, by way of notice, of the date on which the survey would be conducted, and after conducting the survey, he shall furnish a copy of the survey report to the petitioner. Thereafter, the respondent shall consider the explanation already submitted by the petitioner to the impugned notice, and pass appropriate orders and take action in accordance therewith. Till the above exercise is undertaken, no coercive steps shall be taken against the petitioner for its eviction. If the petitioner is aggrieved by any order that may be passed by the respondent, he is at liberty to challenge the same, if so advised. No costs.

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N.V. RAMANA, J.

Date: 28th December, 2004

KSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Mandal Revenue Office, Visakhpatnam Rural Mandal,

Visakhapatnam District.

2. Two CCS to GP for Revenue, High Court of AP, Hyderabad (OUT)

3. Two CD copies.